

MINUTES

**NATIVE AMERICAN GRAVES PROTECTION AND
REPATRIATION REVIEW COMMITTEE**

TWENTY-FOURTH MEETING

NOVEMBER 8 AND 9, 2002

**UNIVERSITY OF WASHINGTON
SEATTLE, WASHINGTON**

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Background

The Native American Graves Protection and Repatriation Review Committee was established under the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001 et seq., which was signed into law by President George Bush on November 16, 1990.

Per the Review Committee's charter –

"The duties of the Committee are solely advisory. Specifically, the Committee will be responsible for:

"1. Monitoring and reviewing the implementation of the inventory and identification processes and repatriation activities required under sections 5, 6, and 7 of Public Law 101-601 to ensure a fair and objective consideration and assessment of all available relevant information and evidence;

"2. Reviewing and making findings relating to the identity or cultural affiliation of human remains, funerary objects, sacred objects, and objects of cultural patrimony, or the repatriation of such items, upon the request of any affected party;

"3. Facilitating the resolution of any disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants, and Federal agencies or museums relating to the repatriation of human remains, funerary objects, sacred objects, and objects of cultural patrimony, including convening the parties to the dispute, if deemed desirable;

"4. Compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for disposition of such remains;

"5. Consulting with Indian tribes, Native Hawaiian organizations, and museums on matters pertaining to the work of the Committee affecting such tribes or organizations;

"6. Consulting with the Secretary [of the Interior] in the development of regulations to carry out Public Law 101-601;

"7. Performing such other related functions as the Secretary [of the Interior] may assign to the Committee;

"8. Making recommendations, if appropriate, regarding future care of human remains, funerary objects, sacred objects, and objects of cultural patrimony which are to be repatriated; and

"9. Submitting an annual report to Congress on the progress and any barriers encountered in carrying out the Committee responsibilities during the year."

The Review Committee is organized and administered according to the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (1994).

Per NAGPRA, Review Committee members are appointed by the Secretary of the Interior from nominations by Indian tribes, Native Hawaiian organizations, traditional Native American religious leaders, national museum organizations, and scientific organizations.

The Review Committee reports to the Secretary of the Interior. Under the Review Committee's current charter, the Assistant Director, Cultural Resources Stewardship and Partnerships, National Park Service or, in the absence of the Assistant Director, a designee serves as the Designated Federal Officer (DFO), who oversees the activities of the Review Committee and with whom the National Park Service provides administrative and staff support to the Review Committee on behalf of the Secretary of the Interior.

Additional information about the Review Committee – including the Review Committee's charter, membership, meeting protocol, and dispute procedures – is available at the National NAGPRA Website, <http://www.cr.nps.gov/nagpra/> (click on "Review Committee").

Notice of this Review Committee meeting was published in the Federal Register on July 18, 2002 (Vol. 67, No. 138, pages 47396-47397), and October 18, 2002 (Vol. 67, No. 202, page 64410).

The 24th Meeting of the Review Committee

The 24th meeting of the Native American Graves Protection and Repatriation Review Committee was called to order by Mr. Armand Minthorn at 8:30 a.m., Friday, November 8, 2002, in the Walker-Ames Room, Kane Hall, University of Washington, Seattle, WA.

Review Committee members in attendance –

Mr. Armand Minthorn, Chair
Mr. Garrick Bailey
Mr. James Bradley
Mr. Lawrence Hart
Ms. Vera Metcalf
Mr. John O'Shea
Ms. Rosita Worl

Designated Federal Officer in attendance: Mr. John Robbins, Assistant Director, Cultural Resources, National Park Service, Washington, DC

National Park Service staff in attendance –

Ms. Carla Mattix, Solicitor's Office, U.S. Department of the Interior (DOI), Washington, DC
Ms. Martha Graham, Program Officer, National NAGPRA program, National Park Service, Washington, DC
Mr. Timothy McKeown, Program Officer, National NAGPRA program, National Park Service, Washington, DC
Ms. Paula Molloy, Program Officer, National NAGPRA program, National Park Service, Washington, DC
Ms. Cynthia Murdock, Program Officer, National NAGPRA program, National Park Service, Washington, DC
Ms. Lesa Hagel, Consultant, National NAGPRA program, Rapid City, SD

Persons in attendance during part or all of the meeting (names and affiliations as provided at the meeting by attendees) –

Ms. Helen Almojera, Deming, WA
Mr. Bob Anderson, University of Washington, Seattle, WA
Ms. Lara Anderson, U.S. Army Corps of Engineers, St. Louis, MO
Ms. Lisa Anderson, New York State Museum, Albany, NY
Mr. Herbert Anungazuk, National Park Service, Anchorage, AK
Mr. Roger Anyon, Smithsonian Institution, Tucson, AZ
Ms. Risa Arbolino, Smithsonian Institution, Washington, DC
Ms. Keri Baker, Central Washington University, Ellensburg, WA
Mr. Bill Billeck, Smithsonian Institution, Washington, DC
Mr. Michael Bittner, Odyssey Maritime Discovery Center, Seattle, WA
Mr. Isaac Blum, Lummi Tribe of the Lummi Reservation, Bellingham, WA
Ms. Susan Bone, University of Washington, Seattle, WA
Ms. Kristine Bouy, University of Washington, Seattle, WA
Ms. Barbara Brotherton, Seattle Art Museum, Seattle, WA
Ms. Karin Caldwell, Colorado State University, Sparta, WI
Ms. Sandra Carter, University of Washington, Puyallup, WA
Ms. Vicki Cassman, University of Nevada, Las Vegas, NV
Ms. Rosemary Caye, Confederated Salish & Kootenai Tribes, Elmo, MT
Mr. Bill Chada, Bureau of Reclamation, Grand Island, NE
Ms. Janet Cohen, National Park Service, Anchorage, AK
Mr. Steve Denton, Burke Museum, Seattle, WA
Ms. Sara Doyle, Kirkland, WA
Mr. David Francis, University of Washington Extensions Program, Seattle, WA
Ms. Adeline Fredin, Confederated Tribes of the Colville Reservation, Nespelem, WA
Ms. Suzanne Fritch, University of Washington, Seattle, WA

Ms. Myra Giesen, Office of Policy, Bureau of Reclamation, Lawrence, KS
Ms. Kirstie Haertel, National Park Service, Seattle, WA
Mr. Bill Helmer, Timbisha Shoshone Tribe, Death Valley, CA
Ms. Lourdes Henebry-DeLeon, Central Washington University, Ellensburg, WA
Mr. Brent Hicks, Confederated Tribes of the Colville Reservation, Nespelem, WA
Mr. Richard Hitchcock, Phoebe A. Hearst Museum of Anthropology, Berkeley, CA
Ms. Donna Hogerhuis, Muckleshoot Indian Tribe, Auburn, WA
Mr. Audie Huber, Confederated Tribes of the Umatilla Reservation, Pendleton, OR
Mr. Michael Johnson, University of Washington, Bellingham, WA
Mr. Roger Kiers, Seattle Public Utilities, Seattle, WA
Ms. Marina King, University of Washington, Seattle, WA
Mr. Keith Kintigh, Society for American Archaeology, Tempe, AZ
Ms. Jerilyn Kovalenko, University of Washington Extensions Program, Bellevue, WA
Ms. D. Bambi Kraus, National Association of Tribal Historic Preservation Officers, Washington, DC
Ms. Lee Kreutzer, National Park Service, Torrey, UT
Mr. Peter Laape, Burke Museum, Seattle, WA
Mr. Walt Lara, Jr., Yurok Tribe of the Yurok Reservation, Klamath, CA
Mr. Russell Leighty, American Museum of Natural History, New York, NY
Mr. George MacDonald, Burke Museum, Seattle, WA
Ms. Joanne MacDonald, Burke Museum, Seattle, WA
Mr. John H. Madsen, Arizona State Museum, Tucson, AZ
Ms. Meyo Marrufo, Lake County Inter-Tribal NAGPRA Consortium, Nice, CA
Mr. Augustine McCaffery, The Graduate School, Seattle, WA
Ms. Lynette Miller, Washington State Historical Society, Tacoma, WA
Mr. Bryan Mitchell, National Park Service, Washington, DC
Ms. Rebekah Monette, Makah Cultural and Research Center, Neah Bay, WA
Mr. James Nason, Burke Museum, Seattle, WA
Ms. Jodie Nelson, University of Washington Extensions Program, Seattle, WA
Ms. Nancy Nelson, Ak Chin Indian Community of the Maricopa Indian Reservation, Maricopa, AZ
Ms. Nancy Odegard, Arizona State Museum, Tucson, AZ
Mr. Noel D. Orr, Confederated Tribes of the Colville Reservation, Shoreline, WA
Ms. Patience E. Patterson, U.S. Army Corps of Engineers, Fort Worth, TX
Ms. Laura Phillips, Burke Museum, Seattle, WA
Ms. Wanda Quitiquit, Robinson Rancheria of Pomo Indians of California, Nice, CA
Mr. James Riding In, Working Group for the Return of Culturally Unidentifiable Human Remains, Tempe, AZ
Ms. Mary Rossi, Lummi Tribe of the Lummi Reservation, Bellingham, WA
Ms. Eliz Scharf, University of Washington, Seattle, WA
Ms. Lene Schumacher, New York, NY
Mr. Joel Schwarz, University of Washington News & Information, Seattle, WA
Mr. Martin Skrydstrup, Columbia University, New York, NY
Mr. Chuck Smythe, National Park Service, Boston, MA
Mr. Mark Squire, Burke Museum, Seattle, WA
Mr. Kirk Stensvig, Seattle, WA
Ms. Rebecca Tsosie, Arizona State University, Tempe, AZ
Ms. Cathy Van Arsdale, U.S. Army Corps of Engineers, St. Louis, MO
Mr. Andrew Washburn, University of Washington Extensions Programs, Tacoma, WA
Ms. Sherry White, Stockbridge-Munsee Community of Mohican Indians of Wisconsin, Bowler, WI
Mr. Jim Wojtala, U.S. Army Corps of Engineers, Vicksburg, MS
Mr. Frederick York, National Park Service, Seattle, WA

Introduction

Mr. Minthorn welcomed the Review Committee and members of the audience and stressed the responsibility of the Review Committee in implementing NAGPRA. Ms. Worl gave the opening invocation. Review Committee members and National Park Service staff introduced themselves.

Mr. Robbins expressed appreciation to the following University of Washington organizations for sponsoring the Review Committee meeting: American Indian Law Center, Office of Minority Affairs, American Indian Studies Center, Department of Anthropology, Graduate School, and the Archaeology Department of the Burke Museum. Mr. Robbins extended his appreciation to Mr. James Nason, Museology Program, Burke Museum, for his efforts in organizing the meeting. Mr. Robbins asked the members of the audience to register as part of the meeting record.

Review of the Agenda

Mr. Minthorn reviewed the meeting agenda.

Review of the Tulsa, OK, Review Committee Meeting Minutes

Background. Federal Advisory Committee Act (FACA) regulations 41 C.F.R. Part 102-3.165: “(a) . . . The chairperson of each advisory committee must certify the accuracy of all minutes of advisory committee meetings,” and “(c) The Designated Federal Officer (DFO) must ensure that minutes are certified within 90 calendar days of the meeting to which they relate.”

Topic. At the Tulsa meeting, the Review Committee agreed to review the Tulsa meeting minutes electronically and submit any recommended revisions to the National NAGPRA program. The Tulsa meeting minutes were certified by the DFO as required by FACA. Prior to the Seattle meeting, the Tulsa meeting minutes were signed as approved by the Review Committee chair without review by the full Review Committee.

Discussion. Review Committee members expressed concern that they did not have an opportunity to review the final version of the minutes prior to the Seattle meeting to ensure that their revisions were incorporated. Mr. Bradley cited a specific example of an omission.

Conclusion.

1. The Review Committee requested that members receive the final version of the minutes two weeks prior to the subsequent meeting to allow for adequate review.
2. Mr. Bradley requested the following text be added to page 12, at the end of the second to the last paragraph, “Mr. Bradley expressed concern that the Committee did not have sufficient time to review and comment on these draft regulations given the dispute before the Committee and asked that this be placed on the agenda for the Seattle meeting.” Mr. Robbins confirmed that the text would be added pending verification against the transcript.

Administration of NAGPRA

Discussion.

1. Mr. Robbins explained that Mr. Robert Stearns, manager of the National NAGPRA program for the past year and DFO for the Tulsa meeting, had changed positions. Mr. Stearns is currently Special Assistant to the National Park Service’s Deputy Associate Director for Cultural Resources. Mr. Robbins stated that he is currently the DFO of the Review Committee, pursuant to the current Review Committee charter. When the manager position for the National NAGPRA program is filled, Mr. Robbins will delegate DFO responsibilities to the new manager.
2. Mr. Robbins stated that Ms. Kate Stevenson will no longer serve as Associate Director for Cultural Resources, effective December 2002 or January 2003, and a new Associate Director will be appointed. Mr. Robbins reviewed the organizational chart of the National Park Service.

Conclusion.

1. Mr. Bradley stated that the administrative changes appear to be above the day-to-day functioning of the National NAGPRA program and implementation of NAGPRA.

2. Ms. Worl expressed concern about instability within the program caused by senior staffing changes, the need for a qualified Native American as the National NAGPRA program manager, and possible conflicts of interest that results from the location of the National NAGPRA program within the National Park Service. Ms. Worl urged the National Park Service to consider appointing Mr. Timothy McKeown as acting or permanent manager of the National NAGPRA program.
3. Regarding the location of the National NAGPRA program within the National Park Service, Mr. Robbins stated that the Department of Interior had recently considered this issue, and had determined and stated that the National Park Service is the appropriate agency to administer NAGPRA.
4. Mr. Minthorn stressed the importance of stability within the National NAGPRA program.

National NAGPRA Reports

Mr. Robbins reviewed the National NAGPRA reports. The Review Committee discussed these topics as follows:

NAGPRA Update: This report provided a summary of the work of the National NAGPRA program in the period between the Tulsa and Seattle meetings.

Discussion.

1. Ms. Worl raised the issue of whether a statute of limitations applies to civil penalties cases. Ms. Mattix stated that the DOI Solicitor's Office is currently reviewing this issue. Ms. Worl stated that clarification of this matter should be a priority due to outstanding cases and asked for an update at the next Review Committee meeting.
2. Ms. Molloy described the activities of the Department of the Interior Contaminated Collections Working Group. The group is utilizing a three-pronged approach to address the issue of collection contamination --
 - a. Raise public and professional awareness of the issue, including discussions of further development of Website materials and resources;
 - b. Develop Department of the Interior policies that apply to all bureaus; and
 - c. Begin dialogues with other Federal agencies to develop additional funding sources, specifically aimed at the issue of testing.

Conclusion.

1. Ms. Worl requested an update on the issue of statute of limitations for civil penalties cases.
2. The Review Committee identified a need for an increased number of NAGPRA training seminars offered throughout the United States. Mr. Robbins stated that the National NAGPRA program would be open to partnership arrangements on training seminars, as well as suggestions regarding venues and topics.
3. The Review Committee asked that the National NAGPRA reports be available to the public. Mr. Robbins stated that the National NAGPRA program will consider posting the reports on the National NAGPRA Website.

Status of Notices: This report provided a summary of all notices published for the period between the Tulsa and Seattle meetings, and cumulatively since 1993. The report also summarized the status of the notice backlog.

Discussion. Mr. Robbins stated that the overall trend for notices shows that the percent of backlog notices is decreasing and the percent of published notices is increasing. Mr. Robbins explained that on-hold notices are placed on hold at the request of the institution for a variety of reasons. The on-hold designation serves the program's records management purposes and does not relieve the institutions of NAGPRA responsibilities. Mr. O'Shea stated that in some cases an institution placed a notice on hold at the request of an Indian tribe.

Conclusion. Ms. Worl stated that timeframes for completion should be developed regarding on-hold notices.

NAGPRA Grants: This report provided a summary of grant applications received and awarded for FISCAL YEAR 2002 and cumulatively for years FISCAL YEAR 1994 through FISCAL YEAR 2002.

Discussion. Ms. Worl stated that she was concerned that \$250,000 of the \$2.467 million appropriated for the NAGPRA grants program was reprogrammed in fiscal year 2002 for administrative costs. Mr. Robbins explained that grant funds may be reprogrammed as needed to cover administrative costs and that his goal is to continuously decrease the reprogrammed amount.

Conclusion. Ms. Worl recommended trying to reduce the amount of reprogrammed grant funds.

Status of NAGPRA Regulations: This report provided a summary of the status of the five reserved sections of NAGPRA regulations.

Background. When drafting the statute, Congress assigned responsibility for promulgating NAGPRA regulations to the Secretary of the Interior, who delegated drafting responsibility to the National Park Service. Proposed NAGPRA regulations were published in the Federal Register in 1993; 43 C.F.R. 10 was published in 1995, with five reserved sections –

1. Section 10.7. Disposition of unclaimed human remains, funerary objects, sacred objects, or objects of cultural patrimony.
2. Section 10.11. Disposition of culturally unidentifiable human remains.
3. Section 10.12. Civil penalties. (An interim rule was published in 1997.)
4. Section 10.13. Future applicability.
5. Section 10.15(b). Failure to claim where no repatriation or disposition has occurred.

Discussion. Mr. Robbins stated that Section 10.12 and Section 10.13 are under review within the National Park Service and the Review Committee will be informed of their progress. Section 10.11 was discussed at the Seattle meeting (see below, “Regulations – Section 10.11. Disposition of culturally unidentifiable human remains”).

Culturally Unidentifiable Human Remains: This report provided a summary of the progress of the culturally unidentifiable human remains database and requests to the Review Committee for disposition of culturally unidentifiable human remains.

Background. 43 C.F.R. 10.10, Repatriation. “(g) Culturally unidentifiable human remains. If the cultural affiliation of human remains cannot be established pursuant to these regulations, the human remains must be considered culturally unidentifiable. Museum and Federal agency officials must report the inventory information regarding such human remains in their holdings to the Departmental Consulting Archeologist who will transmit this information to the Review Committee. The Review Committee is responsible for compiling an inventory of culturally unidentifiable human remains in the possession or control of each museum and Federal agency, and, for recommending to the Secretary specific actions for disposition of such human remains.”

Discussion. Ms. Worl asked for the number of institutions entered into the database of culturally unidentifiable human remains to date. Mr. Robbins stated that number is not available from the current database information, and added that the National NAGPRA program is working to answer that question. Ms. Murdock explained that National NAGPRA files contain data from at least 326 institutions. Data from approximately 40 percent of the institutions have been entered database of culturally unidentifiable human remains to date. Ms. Murdock explained that the National NAGPRA program is entering data from larger, more complete inventories first and then will enter data from smaller, less complete inventories. Mr. O’Shea stated that inventories may seem incomplete when information does not exist in an institution’s records and not because the institution has not supplied it. He added he was concerned about the lack of a systematic approach for choosing inventories for entry. Ms. Murdock estimated 2-4 years to complete data entry; she continues to revise this estimate as National NAGPRA program interns enter data.

Conclusion.

1. Ms. Worl suggested that this topic needs to be analyzed to see whether the Review Committee and the National NAGPRA program are being responsive to public concerns regarding the database and to explore possible ways to expedite the process.
2. The Review Committee asked that the report on the database of culturally unidentifiable human remains state the number of museums and Federal agencies that are contained in the database.
3. The Review Committee stressed that the completion of the culturally unidentifiable human remains database is a priority.

Status of Disputes: This report provides a summary and current status of all disputes.

Background. 25 U.S.C. 3006, Section 8, “(c) Responsibilities. – The [Review Committee] established under subsection a) shall be responsible for –... (3) upon the request of any affected party, reviewing and making findings related to – (A) the identity or cultural affiliation of cultural items, or (B) the return of such items; (4) facilitating the resolution of any disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants and Federal agencies or museums relating to the return of such items including convening the parties to the dispute if deemed desirable.” 43 C.F.R. Section 10.17, “(b) Review Committee Role. The Review Committee may facilitate the informal resolution of disputes relating to these regulations among interested parties that are not resolved by good faith negotiations...”

Discussion. The Review Committee reviewed the status of the following disputes –

1. Dispute scheduled for consideration at the Seattle meeting –

CON009 Ho-Chunk Nation and the Field Museum: This dispute was withdrawn per a November 4, 2002, letter from the Ho-Chunk Nation Legislature and a November 9, 2002, Statement of Record from the Field Museum. Copies of both documents were provided to the Review Committee. While satisfied with the decision of the Ho-Chunk Nation Legislature, the Review Committee expressed concern that no dispute would be heard at the Seattle meeting.

2. Other disputes –

PEN008 Hopi Tribe and U.S. Department of the Interior, National Park Service, Mesa Verde National Park: The Chair and the DFO will review this dispute to determine whether it is appropriate for Review Committee consideration, in light of the National Park System Advisory Board’s report on determinations of cultural affiliation.

PEN010 American Indian Intertribal Association (AIIA) and University of Toledo: The Chair and DFO will review this dispute to determine whether it is appropriate for the Review Committee’s consideration, in light of the Review Committee’s discussion of the “affected party” issue.

PEN011 Narragansett Indian Tribe and Peabody Museum of Archaeology and Ethnology: The National NAGPRA program will request information from the parties, as outlined in the current dispute resolution procedures. Then the Chair and DFO will review this dispute to determine whether it is appropriate for the Review Committee’s consideration.

PEN012 Piro-Manso-Tiwa and U.S. Department of the Interior, National Park Service, Salinas Pueblo Missions National Monument: The Chair and DFO will review this dispute to determine whether it is appropriate for Review Committee consideration. The dispute involves reburial, which is not specifically addressed in the dispute resolution procedures.

PEN013 Sand Creek Massacre Descendant’s Trust and Cheyenne Tribal Governments: The Chair and DFO will review this dispute to determine whether it is appropriate for the Review Committee’s consideration, in light of the Review Committee’s discussion of the affected party issue. Mr. Hart stated that he does not consider the Sand Creek Massacre Descendant’s Trust to be an affected party. The U.S. Department of the Interior, Bureau of Indian Affairs proposed the dispute, but is not a party to the dispute. In addition, the dispute involves issues that are not specifically addressed in the dispute resolution procedures.

PEN014 Hopi Tribe and U.S. Department of the Interior, National Park Service, Aztec Ruins National Monument: Previously, the Chair and DFO determined that this dispute was not appropriate for the Review Committee’s consideration due to the issues involved in

the dispute. The Hopi Tribe had asked to appeal the decision to the entire Review Committee, but the appeal was delayed pending the National Park System Advisory Board's report on determinations of cultural affiliation. To date, the Hopi Tribe has not formally appealed the determination.

- FIN015 Western Apache NAGPRA Working Group and Denver Art Museum: Ms. Graham explained that the Denver Art Museum and the Western Apache Working Group continue to work towards fulfilling the Review Committee's recommendations. The Denver Art Museum submitted a September 18, 2002, memorandum with new preliminary findings of cultural affiliation for two of the objects that were part of the repatriation request by the Western Apache NAGPRA Working Group, a cap and a mask. For the cap, the Denver Art Museum affirmed the Review Committee's recommendation. For the mask, the Denver Art Museum found information that suggested the cultural affiliation was more likely to be with the Mescalero Apache Tribe or Fort Sill Apache Tribe. The Mescalero Apache Tribe has informed the museum that the mask is not culturally affiliated with the tribe and will not submit a claim.
- PEN016 Royal Hawaiian Academy of Traditional Arts and the Bishop Museum: The National NAGPRA program is in the process of requesting information required by the dispute resolution procedures. Upon receipt of all information, the Chair and DFO will review this dispute to determine whether it is appropriate for Review Committee consideration.
- PEN017 Narragansett Indian Tribe and the Robert S. Peabody Museum of Archaeology: The National NAGPRA program has requested information from both parties. Upon receipt of all information, the Chair and DFO will review this dispute to determine whether it is appropriate for Review Committee consideration.

Conclusion.

1. The goal is to reduce the dispute backlog by considering at least one dispute per meeting.
2. The Review Committee suggested that the National NAGPRA program develop a process and a capacity to have materials regarding disputes queued and available for Review Committee consideration.
3. The Review Committee requested that dispute materials are available 1 month minimum prior to a meeting to provide adequate time for review.
4. The Review Committee requested that review of the dispute resolution procedures be placed on the agenda for the next meeting. Possible discussion topics include the number of disputes to be heard at each meeting and criteria for prioritizing pending disputes.

Federal Agency Implementation: This report summarized efforts by the National NAGPRA program to develop a standardized format for Federal agency reporting on NAGPRA-related activities and collections.

Background. The Archaeological Resources Protection Act (1979) mandates that Federal agencies complete the annual Federal Archeology Program Questionnaire, which the National Park Service's Archeology and Ethnography program tabulates and submits as a report to Congress. The National NAGPRA program has developed a draft pilot Federal agency survey that focuses solely on NAGPRA issues, which Federal agencies can use voluntarily to report on NAGPRA activities.

Discussion. Mr. Minthorn expressed concern about the lack of compliance of Federal agencies. Mr. Bradley agreed and suggested that the Review Committee use the report to Congress to highlight this issue.

Public Access to NAGPRA Information: This report provided a summary of various ways that the public can access information on NAGPRA implementation, including the National NAGPRA Website, <http://www.cr.nps.gov/nagpra>, and the Native American Consultation Database, <http://www.cr.nps.gov/nagrpa/NACD/INDEX.HTM>.

Discussion. The Review Committee did not discuss this report further.

National NAGPRA FISCAL YEAR 2003 Work Plan: This report provides a summary of six areas that the National NAGPRA program will emphasize in FISCAL YEAR 2003: notices, regulations,

NAGPRA Review Committee support, grants, public information dissemination, and training and technical assistance.

Discussion. The Review Committee did not discuss this report further.

Action List: This report tracks the progress of actions items requested by the Review Committee.

Discussion. The Review Committee asked whether a new member would be appointed to fill Mr. Hart's position on the Review Committee by the next meeting. Mr. Robbins stated that a new member would be appointed by the May 2003 meeting. [Mr. Hart's term on the Review Committee expired in September 2001. Per the Review Committee charter, Mr. Hart may continue to serve until a successor is appointed or Mr. Hart is reappointed.]

Conclusion. The National NAGPRA program will update the action list based on discussions at the Seattle meeting.

Regulations – Section 10.11, Disposition of Culturally Unidentifiable Human Remains

Public Presentations

Ms. Rebecca Tsosie, Arizona State University, described the components of the grant funded by the National NAGPRA program for a dialogue on culturally unidentifiable Native American human remains, implemented by Ms. Tsosie on behalf of Arizona State University (ASU) and the Indian Legal Program. The grant funded two meetings: a tribal forum on November 30, December 1 and 2, 2001, and a conference on June 14, 2002.

The tribal forum convened over 120 participants, and generated a vision statement and five policy recommendations (discussed by Mr. Riding In).

The conference convened approximately 20 invited participants from tribal, museum, and scientific communities. Conference participants discussed the five policy recommendations developed during the tribal forum and the proposed rule on culturally unidentifiable human remains, among other topics. The participants of the conference agreed on four general propositions –

1. The remains of early peoples of North America are Native American.
2. The National Park Service should expeditiously complete an inventory of all culturally unidentifiable human remains.
3. The law requires consultation with Indian tribes, and increased consultation would result in culturally affiliating many remains now designated as culturally unidentifiable.
4. The Federal government should provide increased funding for consultation.

Ms. Tsosie stated that a fair process for the ultimate resolution of this issue needs to be determined. Ms. Tsosie said that the regulations should not be drafted without the underlying information that will come from the completed inventory of all culturally unidentifiable human remains. Ms. Tsosie described three collateral issues regarding NAGPRA that deserve attention –

1. NAGPRA faces many challenges (for example, court decisions in the Bonnichsen case).
2. NAGPRA interfaces with existing Indian laws.
3. International cases need to be considered when focussing on NAGPRA.

Mr. James Riding In, Working Group for the Return of Culturally Unidentifiable Human Remains.

The working group consists of grassroots repatriation and cultural specialists working to protect and repatriate ancestral human remains.

The working group objects to the draft regulations on culturally unidentifiable human remains presented at the Review Committee meeting in Tulsa, OK.

The working group advocates moving NAGPRA oversight from the National Park Service to the office of the Secretary of the Interior.

Mr. Riding In summarized the tribal forum held November 30, December 1 and 2, 2001, at ASU. Forum participants developed the following "Recommendations for Disposition of Culturally Unidentifiable Native American Human Remains under NAGPRA" –

1. Culturally unidentifiable Native American human remains are culturally affiliated to contemporary Native peoples, including federally recognized tribes, nonfederally recognized tribes, Native Alaskan peoples, and Native Hawaiian peoples.
 2. All Native American human remains and associated funerary objects, including those deemed culturally unidentifiable, shall be under the ownership and control of contemporary Native peoples.
 3. All culturally unidentifiable Native American human remains shall be promptly repatriated to Native peoples in accordance with procedures to be determined by contemporary Native American groups.
 4. All scientific study of culturally unidentifiable Native American human remains shall immediately cease.
 5. The Federal government shall be responsible for funding the repatriation costs.
- The working group requests that the Review Committee –
1. Adopt the five recommendations as part of the policy for disposition of culturally unidentifiable human remains;
 2. Support the removal of NAGPRA oversight from the National Park Service; and
 3. Investigate whether analysis of culturally unidentifiable human remains is being conducted by any Federal agency or museum subject to NAGPRA.

Mr. Keith Kintigh, Society for American Archaeology.

The Society for American Archaeology was involved in the development of NAGPRA and continues to support NAGPRA.

Mr. Kintigh offered the following comments about NAGPRA and the draft regulations –

1. NAGPRA does not mandate the return of all Native American human remains, but contains a principle of balance between scientific and educational interests and Native American interests.
2. NAGPRA unequivocally provides the right for culturally affiliated Indian tribes to repatriate their ancestral remains.
3. Congress assigned the Review Committee the task of making recommendations towards the development of a process for the disposition of culturally unidentifiable human remains. The law does not provide the Department of the Interior the authority to issue regulations on the disposition of culturally unidentifiable human remains; however, should the Review Committee and the Department of the Interior proceed with the regulations, SAA will help make the regulations as effective as possible.
4. For culturally unidentifiable human remains, questions arise on the balance of interests and who should receive control of the human remains. If the human remains are to be transferred to Native American groups, SAA would argue for thorough scientific documentation to mitigate the loss of scientific information.
5. The draft regulations include associated funerary objects, which is not warranted in the law. Institutions should be required to notify the Department of the Interior only when there is a change in status of the human remains, such as a disposition. Aboriginal territory should be defined consistently in the law and in the proposed regulations. The regulations should clarify that, while they do not mandate new scientific studies, the study of culturally unidentifiable human remains is not prohibited.

Mr. Kintigh discussed the June 14, 2002, conference. Mr. Kintigh stated that Ms. Tsosie did a wonderful job of summarizing the results of the meeting. Mr. Kintigh discussed the following points regarding the conference –

1. Individuals have different perspectives on the same topic, as is evident in Ms. Tsosie's report on the conference. The report was not reviewed by the representatives of the scientific community who participated in the conference.
2. Mr. Kintigh pointed out that Ms. Tsosie used a lack of dissent to indicate assent on certain points, which was not always accurate given the structure of the conference. Participants did not reach formal agreement on the wording of the propositions listed by Ms. Tsosie in her presentation.
3. Mr. Kintigh noted that Ms. Tsosie referenced difficulty in getting people to talk and noted a lack of trust among the participants. He explained the concern that the opportunity to engage in open dialogue would be limited because tribal representatives came to the conference having already made key decisions on the topic.
4. The transcript of the conference has multiple errors and should be read with caution.

Mr. Walt Lara, Jr., Yurok Tribe of the Yurok Reservation, stated that he needed clarification of the term "culturally unidentifiable." Ms. Mattix read the definition of culturally unidentifiable human remains from

the statute. Mr. Lara stated that the term culturally unidentifiable does not exist for his people and expressed frustration that people do not understand Indian tribes' need to return ancestral remains. Mr. Lara described difficulties that his tribe has faced when dealing with Sonoma State University regarding culturally unidentifiable human remains.

Ms. Bambi Kraus, National Association of Tribal Historic Preservation Officers, asked how institutions made determinations of cultural affiliation and if that process changed since NAGPRA was passed. Mr. Bradley stated that he could not speak on behalf of all museums; however, every museum known to him follows the law. Mr. Bradley and Mr. O'Shea suggested that Ms. Kraus read the Review Committee's recommendations on culturally unidentifiable human remains for clarification of this issue. Ms. Kraus questioned the value that human remains with flawed records have to museums. Mr. O'Shea stated that within the principles of agreement, the Review Committee agreed that the designation of culturally unidentifiable is not necessarily permanent and could change with consultation and additional information.

Review Committee Comments on Presentations

The Review Committee had the following questions and comments following the public presentations –

1. Ms. Worl stated that she was pleased that the National Park Service awarded the grant to Arizona State University and the Indian Legal Program, and noted that the forum convened as part of the grant work involved broad tribal representation. Ms. Worl also reported that her review of the record of comments on the three drafts of the Review Committee's recommendations concerning the disposition of culturally unidentifiable human remains showed that comments were received from 33 tribes in contrast to 128 comments received from museums and scientific organizations.
2. Mr. Hart stated that he has felt the alienation of tribal groups involved with repatriation. Mr. Hart stated that he is dedicated to ensuring the return of all Native American human remains and disagrees with the statement in the draft regulations at 10.11 (d)(3), "A Federal agency or museum may choose to retain possession or control of culturally unidentifiable human remains and associated funerary objects."
3. Ms. Metcalf agreed with Mr. Hart's statements and expressed appreciation for the report presented by Ms. Tsosie.
4. Mr. Bradley stated that he expressed reservations at the Review Committee's meeting in Tulsa that the draft proposed rule did not reflect the principles approved by the Review Committee at the Juneau meeting, and that he did not feel that the Review Committee gave complete approval of the draft proposed rule at the Tulsa meeting.
5. Mr. Bailey stated he was concerned about the lack of inclusion of nonfederally recognized Indian groups in this process.
6. Mr. O'Shea stated that he had participated in the June 14, 2002, conference. Mr. O'Shea stated that his impression at the symposium was that the discussions were back to the all-or-nothing, who's-going-to-prevail attitude of the early 1990s, which is not how he perceives that the spirit of NAGPRA has evolved. Mr. O'Shea added that the working group's recommendations were presented as a final document and not as discussion points. Mr. O'Shea asked the Review Committee to consider two issues: first, that the status of culturally unidentifiable is transient rather than permanent, and second, that as consultation continues culturally unidentifiable human remains can be affiliated.
7. Ms. Worl asked specific questions of Mr. Kintigh and Ms. Tsosie regarding their understanding of and suggestions for possible consultation processes for this issue. Mr. Kintigh stated that he agreed that consultation should begin when an Indian tribe files a request for repatriation of culturally unidentifiable human remains and then a more broad consultation process should proceed based on the merits of the request. Ms. Tsosie stated that the participants of the forum and conference, especially the Native participants, felt that Native people should be consulted in developing the inventory of all culturally unidentifiable human remains.

Discussion of Section 10.11, Disposition of Culturally Unidentifiable Human Remains

Background. Per a presentation by Mr. McKeown –

1. The Review Committee developed a set of recommendations regarding the disposition of culturally unidentifiable human remains that was published in the Federal Register on June 8, 2000.

2. A draft proposed rule for Section 10.11 was developed, dated May 6, 2002, for the Review Committee's consideration at the Tulsa meeting.
3. Recent National NAGPRA program activity on Section 10.11 includes correspondence received since the Tulsa meeting and a symposia report from the two conferences held at Arizona State University on November 30 through December 2, 2001, and June 14, 2002.
4. This section of the regulations continues to be discussed as a draft and is not ready to be published as a notice of proposed rulemaking.
5. Prior to the Seattle meeting, discussions between Mr. Stearns, then DFO, and Mr. Minthorn, Chair, resulted in the regulations' being brought before the Review Committee at the Seattle meeting for additional consideration instead of being published in the Federal Register as a notice of proposed rulemaking. Mr. Minthorn stated that the decision was made due to tribal criticism and displeasure with the draft regulations.

Discussion. Mr. McKeown explained that the draft proposed rule provided to the Review Committee members and public at the Seattle meeting was exactly the same as the draft proposed rule provided at the Tulsa meeting. Mr. McKeown summarized the changes proposed by the Review Committee during the Tulsa meeting.

1. Subsection (b): A general recommendation that "xxx" would be 12 months.
2. Subsection (c)(1) –
 - a. Replace "Upon receipt of a request for" with "Prior to any agreement regarding the."
 - b. Delete "from an Indian tribe or Native Hawaiian organization."
 - c. Replace "the museum and Federal agency" with "the museum or Federal agency."
3. Subsection (c)(2): Delete entirely.
4. Subsection (d): A discussion regarding the applicability of the phrase "with priority given in the order listed."
5. Subsection (d)(1)(ii): Replace "the Indian tribe that is recognized" with "the Indian tribe or tribes that are recognized."
6. Subsection (d)(1)(iii): Replace "the Indian tribes and Native Hawaiian organizations" with "the individual or consortium of Indian tribes or Native Hawaiian organizations."
7. Subsection (e)(2): Delete and replace with "Within 30 days of transferring possession or control of culturally unidentifiable human remains and associated funerary objects pursuant to subsection (d)(1) or (d)(2), the museum or Federal agency must notify the Manager, National NAGPRA program. Within 30 days of receipt of such notification, the Manager, National NAGPRA program, must revise the list of culturally unidentifiable human remains and associated funerary objects and make the revised list of culturally unidentifiable human remains and associated funerary objects accessible to Indian tribes, Native Hawaiian organizations, nonfederally recognized Indian groups, museums, and Federal agencies."
8. 43 C.F.R. 10.9 (e)(6): Replace "the first sentence," with "the second sentence."

Review Committee's plan of action: The Review Committee expressed concern about contrasting views regarding the draft regulations and the need to get additional feedback from the public. After discussion, the Review Committee agreed to discuss the draft regulations, address concerns of Review Committee members with edits to the document, and distribute the document as a draft proposed rule. This process would allow for additional public review and comment, which the Review Committee could consider in further discussions before the regulations are published as a notice of proposed rulemaking.

The Review Committee discussed the following changes to the proposed rule –

1. Preamble: Ms. Worl requested wording in the preamble that acknowledges the Native belief that all Native American human remains are culturally affiliated to contemporary Native peoples. Ms. Worl requested an addition to the preamble that explained that consultation has occurred for culturally unidentifiable human remains during the initial inventory process required under 25 U.S.C. 3003, Section 5.
2. Subsection (b)(1) –
 - a. Replace "list" with another title such as "Review Committee inventory" or "comprehensive inventory."
 - b. Add a sentence that details all data fields that are to be included in the database. The Review Committee suggested publishing an interim inventory with the proposed rule.

Mr. Robbins stated that the National NAGPRA program would first need to develop a methodology for ensuring that inventories have been entered in a systematic, consistent format.

3. Subsection (c)(1)(ii): Add "and" after the semicolon.
4. Subsection (c)(1)(iii): Mr. O'Shea stated that the term "cultural relationship" is ambiguous and suggested that the term be defined or replaced. Mr. McKeown said that the term comes from Section 3 of the regulations and would need to be defined in the definitions section of the regulations.
5. Subsection (c)(2): Delete entirely.
6. Subsection (d)(1): Change to "A Federal agency or museum must offer to transfer control of culturally unidentifiable human remains for which it cannot prove right of possession, with priority given in the order listed."
7. Subsection (d)(2): Edit the beginning of the sentence, "If none of the Indian tribes or Native Hawaiian organizations identified in subsection (d)(1) agrees to accept the transfer, the Federal agency ..."
8. Subsection (d)(3): Change sentence to "A Federal agency or museum may choose to retain possession or control of funerary objects that are associated with culturally unidentifiable human remains."
9. Subsection (d): The Review Committee had a detailed discussion about this section. While all concerns were not addressed in the revised language, the Review Committee decided to retain this language during the public review and comment period with the understanding that additional discussion can occur at a future date.
10. Subsection (f): Mr. McKeown pointed out that the Review Committee's discussions regarding affected party, during which the Review Committee recommended that nonfederally recognized Indian groups not be included as part of disputes, could have implications for this section.

Conclusion.

1. The Review Committee requested that Mr. McKeown make the changes recommended by the Review Committee and then distribute the draft proposed rule to museums, Federal agencies, Indian tribes, Native Hawaiian organizations, and interested members of the public, and on the National NAGPRA Website. Ms. Mattix stated that the proposed rule must be reviewed within the Department of the Interior prior to any distribution.
2. Ms. Worl suggested that some consultation requirements be added, using a Department of Justice initiative as a model.
3. The Review Committee requested a copy of the current version of the database of culturally unidentifiable human remains at the next meeting.

Federal Agency Implementation

Federal agency implementation survey

Topic. Ms. Molloy introduced the topic. In an effort to improve Federal agency reporting, the National NAGPRA program hosted a meeting with Federal agency, tribal, and museum representatives in July 2002 in Albuquerque, NM. Discussions focussed on a draft document aimed at providing a consistent format for Federal agencies to report to the Review Committee on NAGPRA implementation and compliance. Three Federal agencies agreed to participate in the pilot reporting -- the Bureau of Indian Affairs, the Forest Service, and the Corps of Engineers, Vicksburg District and Fort Worth District. The Review Committee was provided copies of the pilot reports for the Bureau of Indian Affairs and the Forest Service. Before being implemented on a nationwide basis, the survey would undergo full interagency review and comment.

Mr. Frank Wozniak commented on behalf of U.S. Department of Agriculture, Forest Service. The Forest Service found the pilot survey to be a useful exercise in clarifying several NAGPRA matters and providing information to the Review Committee on Forest Service implementation and compliance. The pilot survey brought to light discrepancies between the Forest Service's internal records regarding NAGPRA compliance and the records maintained by the National NAGPRA program. In addition, the pilot survey aided in clarifying that some Forest Service units did not

submit inventories or summaries due to the lack of collections that fall under NAGPRA. The law does not require Federal agencies or museums to file statements of no collection or inventory. Mr. Wozniak stated that the Forest Service is working with the National NAGPRA program to update information pertaining to the Forest Service. Mr. Wozniak summarized the Forest Service's compliance and implementation efforts and urged the Review Committee members to review the Forest Service's pilot survey report.

Discussion. In response to a question by Mr. O'Shea regarding developing a template for reporting culturally unidentifiable collections for entry into the database, Mr. Wozniak stated that the Forest Service's Southwestern Region uses a template for reporting culturally unidentifiable human remains. Ms. Worl asked if the Forest Service had an agencywide policy for reburial on Forest Service lands. Mr. Wozniak stated that the Forest Service is developing a systemwide policy on reburial, which is undergoing internal review. To date, a number of reburials have occurred on Forest Service lands.

Ms. Worl described three topics she would like added to the Federal agency implementation survey: 1) Federal agency NAGPRA budgets; 2) the status of Federal agency NAGPRA collections in nonfederal repositories and repositories outside of the United States; and 3) the Federal agency reburial policies.

Ms. Molloy explained that a question regarding Federal agency NAGPRA budgets had been in an earlier draft of the survey, but was removed in response to input from Federal agency representatives that budget information probably would not be supplied due to the voluntary nature of the survey. Ms. Molloy stated that Ms. Worl's other topics would be considered in revising the survey.

Other Federal agency reports

Department of the Interior, Bureau of Land Management: Written report provided.

Department of the Interior, Bureau of Reclamation: Ms. Myra Giesen presented an update on the status of Bureau of Reclamation's national NAGPRA implementation and compliance efforts, which was also provided in a written report. Ms. Giesen commented on the Federal agency pilot survey and urged that the survey be reviewed at a national level by Federal agencies and by the Review Committee to ensure that the Federal agencies would be comfortable with and utilize the survey. Ms. Giesen commented that the perceived lack of Federal agency reporting leads to generalizations about lack of compliance by Federal agencies, when in fact some Federal agencies report fully and regularly.

On behalf of Ms. Lynne MacDonald, Ms. Giesen summarized the status of Bureau of Reclamation, Pacific Northwest Region's NAGPRA implementation and compliance efforts. Ms. Giesen urged the Review Committee to review the written report submitted by Ms. MacDonald. Mr. Minthorn and Mr. Hart commended Ms. Giesen and the Bureau of Reclamation on the agency's NAGPRA compliance record and the agency's consistency in reporting to the Review Committee.

Disputes

National Park System Advisory Board Report

Background. In July 2000, then National Park Service Director Robert Stanton requested that the National Park System Advisory Board undertake a Servicewide review of how the National Park Service makes determinations of cultural affiliation of human remains and associated funerary objects under NAGPRA. The request was prompted, in part, by concerns raised by the Hopi Tribe and the NAGPRA Review Committee regarding cultural affiliation determinations by the National Park Service.

Topic. Mr. Robbins presented a summary of the final report by the National Park System Advisory Board, which was provided to the Review Committee. The report focused on how the National Park

Service makes determinations of cultural affiliation for National Park Service collections subject to NAGPRA, and included the following recommendations –

1. Traditional association and cultural affiliation: The National Park Service's NAGPRA Handbook should incorporate further guidance to clarify the meaning and use of "cultural affiliation" as defined in NAGPRA and "traditionally associated people" as defined in the National Park Service Management Policies 2001.
2. Consultation: In many cases, the National Park Service has been responsive to requests for consultation regarding cultural affiliation on a individual tribal basis. Further guidance is needed, however, to ensure that the National Park Service understands the importance of, and is responsive to, requests for individual tribal consultation, and that the National Park Service offers such opportunities whenever appropriate.
3. Determining cultural affiliation: The National Park Service should strive to make the most precise determinations of cultural affiliation possible regarding each cultural item in a park's collections, and further guidance in the NAGPRA Handbook on this topic is needed
4. Technical improvements in Notices of Inventory Completion: Notices should consistently reflect each Native American group's status in the repatriation process, specifically noting if there are agreements among groups regarding which group will lead in a repatriation, which groups, if any, have elected to withdraw from a repatriation, and other pertinent information. Further guidance in the NAGPRA Handbook on this topic is needed.
5. Further public participation: Further discussions with Native Americans and others affected by NAGPRA should be included as the National Park Service develops the recommended guidance.

Discussion.

1. Mr. Robbins stated that the report by the subcommittee of the National Park System Advisory Board was accepted by the National Park System Advisory Board and submitted to the Director, National Park Service, who referred the report to the Associate Director for Cultural Resources, who referred the report to the Assistant Director for Cultural Resources, Mr. Robbins, who was instructed to effect the report's recommendations. Mr. Robbins referred the report to Mr. Frank McManamon, Manager of the National Park Service's Archeology and Ethnography program and responsible for Park NAGPRA in the Washington office, to developing a plan for effecting the report's recommendations.
2. Ms. Worl stated that the report does not clearly define cultural affiliation. The report states that cultural affiliation refers to a relationship to cultural items, without including reference to earlier identifiable groups.

Conclusion.

1. Ms. Worl asked that her request for clarification of the definition of cultural affiliation be noted to the National Park Service.
2. Mr. Bradley asked that the Review Committee be updated on the implications of the report in terms of the Hopi Tribe-Chaco Culture National Historical Park dispute and the pending disputes between the Hopi Tribe and Mesa Verde National Park and Aztec Ruins National Monument.

Discussion of Affected Party

Background. For pertinent citing in the statute and regulations, see below, "National NAGPRA Reports, Status of Disputes, Background." Ms. Mattix explained that neither the statute nor the regulations clearly state the meaning of affected party, and the preamble to the regulations does not provide additional information about the terms "affected party/ies" or "interested party/ies."

Topic. Ms. Mattix introduced the topic of the definition of affected party. Ms. Mattix and Mr. Robbins asked the Review Committee to develop reasonable guidance about who could be considered an affected party for the purposes of the dispute resolution procedures.

Discussion. The Review Committee clarified that the National NAGPRA program reviews inquiries about disputes on an ongoing basis. The Chair and DFO determine who is an affected party as part of determining which proposed disputes are appropriate for the Review Committee's consideration. The Review Committee distinguished between the broad category of interested party and the more

narrow category of affected party. An affected party can receive a remedy under NAGPRA. Affected parties include those listed specifically in the statute – lineal descendants, Indian tribes, Native Hawaiian organizations, museums, and Federal agencies – and groups of those entities. Groups must demonstrate that they represent each individual entity within the group for purposes of the dispute. An agent may represent an affected party or parties but an agent is not considered an affected party. If the Chair and DFO decline consideration of a proposed dispute because they determine that the proposer is not an affected party, the proposer may use the appeal process in the dispute resolution procedures to present a case to the Review Committee for consideration as an affected party.

Conclusion. The National NAGPRA program will draft language for the Review Committee's dispute resolution procedures for consideration by the Review Committee.

Report to Congress

Background. 25 U.S.C. 3006, Section 8 (h), requires – “Annual Report – The committee established under subsection (a) shall submit an annual report to the Congress on the progress made, and any barriers encountered, in implementing this section during the previous year.”

Topic. Review Committee members prepared a draft 1999-2001 Report to Congress for consideration of the full committee at this meeting.

Discussion. The Review Committee discussed the report in depth, made changes with the approval of all members, and approved a final version to be submitted as Review Committee's report to Congress. The following significant issues were discussed and changes were made accordingly –

1. Introduction: Ms. Worl suggested that less emphasis be placed on the advisory role of the Review Committee and suggested wording that highlighted their statutory responsibilities.
2. Section 3, Recommendations on the disposition of culturally unidentifiable human remains: Ms. Worl pointed out that three versions of the draft recommendations had been published, not two versions. The Review Committee agreed to include a statement that public comment on the first recommendations was taken into account when reviewing the draft recommendations at the Review Committee's meeting in Portland, OR.
3. Dispute resolution: In the first paragraph, Ms. Mattix suggested dropping any reference to formal or informal mediation; under the regulations all actions by the Review Committee are informal because formal mediation is the judicial process. Mr. Bailey suggested noting for the Fallon Paiute-Shoshone Tribe and Bureau of Land Management dispute that the Bureau of Land Management did not attend. Ms. Worl stated that lack of consensus does not necessarily result in a lack of credibility, as stated in the last paragraph on page 6. After discussion, the Review Committee agreed to wording on page 6 that incorporates both of these viewpoints.
4. Implementation issues: The Review Committee rearranged the implementation issues in priority order. Under “Reorganization of the NAGPRA program,” Ms. Worl suggested adding a statement about concern over the perception of conflict of interest and relocation of the NAGPRA program within the Department of the Interior.
5. Recommendations: The Review Committee evaluated the recommendations to ensure that each recommendation was appropriate for Congress, which reduced the number of recommendations to four. Ms. Worl suggested adding a recommendation to amend the statute to extend NAGPRA to nonfederally recognized tribes. After discussion, the Review Committee agreed to postpone that recommendation for a subsequent report.

Conclusion. The Review Committee asked the National NAGPRA program to prepare the final version of the report to Congress and to distribute the final version electronically to the Review Committee for confirmation prior to printing. Only technical corrections are allowed during this final review.

Update on Kennewick Case

Background. *Bonnichsen, et al. v. the United States*, often referred to as the “Kennewick case,” was filed in 1996. The plaintiffs sought access to study human remains found in the Columbia River near Kennewick, WA, and sought review of the U.S. Army Corps of Engineers’ determination that the human remains were affiliated with several local tribes. The case was briefed in spring of 2001 and a hearing was held in June 2001. U.S. Magistrate Judge John Jelderks issued his opinion and order on August 30, 2002.

Topic. Ms. Mattix summarized the status of the Kennewick case. The main issues in this case concern determinations by the Department of the Interior and the U.S. Army Corps of Engineers that the human remains were Native American, subject to repatriation under NAGPRA, and culturally affiliated to five tribal claimants making a coalition claim for the human remains.

Discussion. Ms. Mattix summarized portions of Judge Jelderks’ opinion and order related to NAGPRA, including the finding that the Kennewick remains are not Native American as defined by NAGPRA, and that there was not sufficient evidence to make a finding of cultural affiliation. Ms. Mattix stated that Judge Jelderks cited unfairness in the process used in making determinations as the judge’s basis for fashioning his own remedy rather than remanding the action back to the agency. Judge Jelderks ordered that the plaintiffs’ request for access to study the remains be allowed, and ordered that the plaintiffs must submit a study protocol within 45 days of the decision and that the United States had 45 days to respond to the protocol. Ms. Mattix stated that the United States has to determine whether it will appeal the entire decision or a portion or portions of the decision. A protective notice of appeal was filed on October 28, 2002, and the United States has 60 days from that date to file a notice of appeal. The United States is currently preparing a response to the plaintiffs’ study protocol, due November 25, 2002. The Solicitor’s Office and the Office of the Secretary have not taken a formal position on the impact of this opinion on NAGPRA, as they are currently studying the possibility of appeal.

Conclusion. In response to a question by Mr. Bradley, Ms. Mattix stated that this decision does not impede the functioning of the NAGPRA Review Committee, although the final outcome of the case might affect the issue of regional consortia dealing with culturally unidentifiable human remains.

Review Committee Business

Upcoming Review Committee meetings

1. May 9-11, 2003, St Paul, MN. Agenda items for this meeting include dispute resolution procedures, timetable for dispute resolution, regulations on culturally unidentifiable human remains, Federal agency reports, 2002 Report to Congress, consultation, governance, and consideration of a dispute.
2. November 2003, Albuquerque, NM

Review Committee Governance

Ms. Graham stated that the National NAGPRA program developed the Review Committee Governance outline to help the Review Committee address topics that have been raised in the past related to the Committee’s operation. Mr. Minthorn stated that the Review Committee has functioned without this guidance to date and can continue. Further consideration of governance was postponed to the Minneapolis/St Paul meeting.

Public Comment

Mr. Richard Hitchcock, NAGPRA coordinator, Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, CA, announced the appointment of the first full-time director for the museum, Dr. Douglas Sharon.

Mr. Keith Kintigh, Society for American Archaeology, commented positively on the results of the National Park System Advisory Report and thanked the Review Committee for its work.

Ms. Bambi Kraus, National Association of Tribal Historic Preservation Officers, asked for details of National NAGPRA program staffing, which Mr. Robbins provided. Ms. Kraus expressed concern that the staff of the National NAGPRA program consists of many senior archeologists and no Native Americans. Ms. Kraus stated that in the Departmental Manual, NAGPRA is administered by the Archeology and Ethnography program. Mr. Robbins explained that since 1999, National NAGPRA is separate from Park NAGPRA, with National NAGPRA administered as a program of the National Center for Cultural Resources and Park NAGPRA administered within the Archeology and Ethnography program of the National Center for Cultural Resources. Ms. Kraus stated that the current staffing of the National NAGPRA program and the cooperative agreement between the Society for American Archaeology and the National Park Service create a conflict of interest. Mr. Robbins stated that while the National Park Service has many cooperative agreements, the National NAGPRA program is not directly responsible for any cooperative agreements.

Mr. James Nason, University of Washington and Burke Museum, stated that the funding need for mitigation of contaminated collections is going to be substantial based on preliminary results of contamination research at the Burke Museum. Mr. Nason urged the Review Committee to take any action possible to help secure funding to address this issue. Mr. Nason stated that there is an increased need for NAGPRA workshops due to the large turnover in NAGPRA representation.

Meeting Adjournment

The meeting adjourned at 5:15 p.m. on Saturday, November 9, 2002.

Certified –

/s/ Mr. John Robbins, Date February 10, 2003
Assistant Director, Cultural Resources
Designated Federal Officer, Native American Graves Protection
and Repatriation Review Committee

Approved on behalf of the Review Committee –

/s/ Mr. Armand Minthorn
Chair, Native American Graves Protection
and Repatriation Review Committee

Date February 11, 2003